

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America

vs.

Anya Lee Jackson,

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Cr. No. 4:07-902-TLW
C.A. No. 4:09-cv-70124

ORDER

This matter is before the court on petitioner Anya Lee Jackson’s (hereinafter “petitioner” or “Jackson”) motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255. In her motion, Jackson alleges that her attorney was constitutionally ineffective for failing to file an appeal as requested. The record does not reflect an affidavit has been filed by counsel responding to the petitioner’s request that an appeal be filed. An attorney’s failure to file a direct appeal after a request from a client constitutes ineffective assistance of counsel. See United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993). When a prisoner alleges that his attorney failed to file an appeal as requested, the court has the authority to vacate the sentence and immediately reimpose and reinstate the movant’s judgment of conviction to allow the prisoner to appeal. See id. Based on the record before it, therefore, the court hereby vacates Jackson’s sentence of conviction and immediately reinstates and reimposes her conviction. The remainder of Jackson’s claims are dismissed without prejudice. See United States v. Killian, No. 01-7470, 2001 WL 1635590, at *1 (4th Cir. Dec. 20, 2001) (unpublished).

It is therefore **ORDERED** that Jackson’s § 2255 petition is granted to the extent it relates to the filing of an appeal as outlined herein, her sentence is vacated, and her judgment of conviction

is immediately reimposed and reinstated with the date of imposition of judgment being the filing date of this order. According to the Appellate Rules, the petitioner has 14 days to appeal from her judgment of conviction once this Order is filed. If the petitioner chooses to appeal, she must file proper notice within this time frame.

It is further **ORDERED** that the remaining claims raised in Jackson's motion are dismissed without prejudice.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
United States District Judge

Florence, South Carolina
May 25, 2010